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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

DEITRIC DANTE GARDNER,

Defendant and Appellant.

F071566

(Super. Ct. No. MF010583A)

OPINION

THE COURT*

APPEAL from an order of the Superior Court of Kern County. Michael B. Lewis,
Judge.

Linda J. Zachritz, under appointment by the Court of Appeal, for Defendant and
Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and
Respondent.

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* Before Gomes, Acting P.J., Kane, J. and Poochigian, J.

Appointed counsel for defendant Deitric Dante Gardner asked this court to review the record to determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant was advised of his right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days elapsed, and we received no communication from defendant. Finding no arguable error that would result in a disposition more favorable to defendant, we affirm.

We provide the following brief description of the facts and procedural history of the case. (See *People v. Kelly* (2006) 40 Cal.4th 106, 110, 124.)

On May 6, 2013, defendant stole a woman's purse from her shopping cart. The purse contained the woman's keys, credit cards, bank cards, and her wedding ring with an appraised value of about \$11,000.

On about July 10, 2013, defendant pled no contest to grand theft of property exceeding a value of \$950 (Pen. Code, § 487, subd. (a))¹ and admitted two prior felony convictions. The trial court sentenced him to four years in prison, and ordered him to pay the woman restitution.

On December 17, 2014, defendant petitioned the trial court pursuant to Proposition 47 (§ 1170.18) to reduce his 2013 felony theft conviction to a misdemeanor. He attached no information regarding the value of the property he stole.

On January 8, 2015, at the hearing on the motion, the prosecutor told the court: "Your Honor, according to a jeweler's appraisal in the file, the wedding ring that was in the purse that was taken is valued at \$11,200." Defense counsel submitted the matter. The trial court denied the petition on the ground that the value of the stolen property exceeded \$950.

On April 28, 2015, defendant submitted a motion for reconsideration of the petition, arguing that the victim was able to recover her wedding ring by purchasing it at

¹ All statutory references are to the Penal Code.

a pawn shop for \$250 and, as a result, defendant's restitution had been set at only about \$450, and the \$450 should be considered the value of the property stolen by defendant.

On May 1, 2015, at the hearing on the motion, the prosecutor argued: "Your Honor, the stated value was \$10,000. I see a logical fallacy in the first argument as to the restitution order. It seems they're stating if the victim is lucky enough to get her property back, [a defendant] should get a misdemeanor. I can't agree with that, and I don't agree with the indignity the victim suffered in paying \$250 to get her \$10,000 ring back. I don't think that states a fair price of that ring, either." The trial court stated that the police report included an appraisal of the ring as \$11,200, and based on that value, defendant stole property with a value in excess of \$950. The court denied the motion for reconsideration.

On May 4, 2015, defendant filed a notice of appeal.

DISCUSSION

On November 4, 2014, California voters enacted Proposition 47, the Safe Neighborhoods and Schools Act, and it went into effect the next day. (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1089.) "Proposition 47 makes certain drug- and theft-related offenses misdemeanors, unless the offenses were committed by certain ineligible defendants. These offenses had previously been designated as either felonies or wobblers (crimes that can be punished as either felonies or misdemeanors)." (*Id.* at p. 1091.)

Under Proposition 47, a theft crime is defined as misdemeanor petty theft if the value of the stolen property is \$950 or less. (§§ 490.2, 484-487, subd. (a) [grand theft defined as theft of property with a value exceeding \$950].) Therefore, theft of property worth \$950 or less that was previously a felony before Proposition 47 was enacted, such as theft of a firearm (§ 487, subd. (d)), is eligible for designation as a misdemeanor petty theft. (§ 490.2.)

"Proposition 47 also created a new resentencing provision: section 1170.18. Under section 1170.18, a person 'currently serving' a felony sentence for an offense that

is now a misdemeanor under Proposition 47, may petition for a recall of that sentence and request resentencing in accordance with the statutes that were added or amended by Proposition 47. (§ 1170.18, subd. (a).) A person who satisfies the criteria in section 1170.18 shall have his or her sentence recalled and be ‘resentenced to a misdemeanor ... unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety.’ (§ 1170.18, subd. (b).) Subdivision (c) of section 1170.18 defines the term ‘unreasonable risk of danger to public safety,’ and subdivision (b) of the statute lists factors the court must consider in determining ‘whether a new sentence would result in an unreasonable risk of danger to public safety.’ (§ 1170.18, subds. (b), (c).)” (*People v. Rivera, supra*, 233 Cal.App.4th at p. 1092.) “Section 1170.18 also provides that persons who have completed felony sentences for offenses that would now be misdemeanors under Proposition 47 may file an application with the trial court to have their felony convictions ‘designated as misdemeanors.’ (§ 1170.18, subd. (f); see *id.*, subds. (g)-(h).)” (*Id.* at p. 1093.)

In this case, it was established at the preliminary hearing that defendant stole property worth more than \$950. Accordingly, his theft would still have been a felony had Proposition 47 been in effect at the time of the offense, and thus he is not eligible for resentencing. The trial court did not err in denying defendant’s petition.

Having undertaken an examination of the entire record, we find no evidence of ineffective assistance of counsel or any other arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The trial court’s order denying defendant’s petition for reduction of his felony conviction to a misdemeanor under Proposition 47 is affirmed.